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IN THE

SUPREME COURT

OF THE

UNITED STATES

OCTOBER TERM, 1970

No. 964

JACK VAN SICKLE, *Petitioner*,

v.

THE STATE OF NEVADA, *Respondent*.

On Petition for Writ of Certiorari to the Supreme Court of the State of Nevada.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Petitioner seeks review by certiorari of an order of the Supreme Court of the State of Nevada revoking petitioner's bail pending his habeas corpus hearing on the validity of the executive warrant issued against the petitioner by the Governor of Nevada.

OPINION BELOW

The opinion of the Supreme Court of the State of Nevada (Appendix A, page 17 of Petition) is reported at 471 P.2d 224.

An order denying petitioner's motion for rehearing was entered by the Supreme Court of the State of Nevada on August 18, 1970 (Appendix B, page 28 of the Petition).

JURISDICTION

Petitioner has invoked the jurisdiction of this court under the provisions of 28 USC, § 1257(3), and Rule 19, ¶1a of the Rules of this court. Respondent contends that there is no showing in the petition that any statute of the State of Nevada is repugnant to the Constitution or the laws of the United States.

QUESTIONS PRESENTED

1. Does the Eighth Amendment to the United States Constitution in any way require bail in every custodial situation?

2. Does the Fourteenth Amendment to the United States Constitution in any way require bail in every custodial situation?

STATEMENT OF THE CASE

Petitioner seeks to invoke the jurisdiction of this court to review by certiorari an order of the Supreme Court of the State of Nevada. The effect of this order was to revoke petitioner's bail pending his habeas corpus hearing on the validity of the executive warrant issued against the petitioner by the Governor of Nevada. The extradition proceedings were brought by the State of California on a criminal complaint charging conspiracy to commit the murder of seven persons, including petitioner's wife, a Superior Court judge, and various attorneys. Conspiracy to commit murder is a capital offense in the State of California.[1]

Petitioner was admitted to bail by order of the District Court of the State of Nevada on March 31, 1970. The Attorney General petitioned the Supreme Court of the State of Nevada for a

[1]West's Annotated California Penal Code, §§ 182.1 and 190.

writ of certiorari for a review of the order admitting petitioner to bail, in that the order exceeded the District Court's jurisdiction. The Supreme Court of Nevada granted certiorari and vacated the order admitting petitioner to bail, holding that the order was in excess of the jurisdiction of the District Court.

ARGUMENT

No Substantial Federal Question Exists in This Case. The Right to Bail Is Not and Never Has Been Coextensive With Custody.

I.

PETITIONER HAS FAILED TO ESTABLISH THAT A FEDERAL QUESTION EXISTS IN LIGHT OF THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Neither the Eighth Amendment nor the Fourteenth Amendment to the United States Constitution requires that every person charged with a state offense be given his liberty on bail pending trial. In *U.S. ex rel. Fink v. Heyd*, 287 F.Supp. 716, *affirmed* 408 F.2d 7, *cert. denied*, 396 U.S. 895, the court held that while the right to bail is a fundamental right, it is not an absolute right. States may constitutionally provide by statute that bail may be granted in some cases and not in others. The court cited *Mastrion v. Hedman*, 328 F.2d 708, *cert. denied*, 376 U.S. 965:

> Neither the Eighth Amendment nor the Fourteenth Amendment requires that everyone charged with a state offense must be given his liberty on bail pending trial. While it is inherent in our American concept of liberty that a right to bail shall generally exist, this has never been held to mean that a state must make every criminal offense subject to such a right or that the right provided as to offenses made subject to bail must be so administered that every accused will always be able to secure his liberty pending trial. Traditionally and

> acceptedly, there are offenses of a nature as to which a state properly may refuse to make provision for a right to bail.

In this regard, see also *Wansley v. Wilkerson*, 283 F.Supp. 54.

This court, in *Carlson v. Landon*, 342 U.S. 524, in considering a statutory provision authorizing the Attorney General to hold without bail alien communists under deportation charges, held that the Eighth Amendment did not confer a right to bail in every criminal prosecution. This court also noted at that time that it was within Congressional competence to define those classes of cases in which bail should be allowed.

In *U.S. ex rel. Covington v. Coparo*, 297 F.Supp. 203, the court noted that, although this court had not passed directly upon whether Congress and the Legislatures are free to define the classes of crimes which are bailable as a matter of right and those which are not, all federal courts which have passed on this question have recognized that a state may constitutionally provide that bail be granted in some cases as a matter of right, and denied in others. *U.S. ex rel. Hyde v. McMann*, 263 F.2d 940, *cert. denied, U.S. ex rel. Hyde v. LaVallee*, 360 U.S. 937.

In *Coparo*, supra, the court also noted that state legislatures may define types of crimes so that bail is not mandatory in all cases, and that a court's refusal of bail in appropriate cases does not trespass on federal constitutional rights under the Eighth or Fourteenth Amendments.

In *Steigler v. Superior Court*, Del.Supr., 252 A.2d 300, *cert. denied*, 395 U.S. 940, 396 U.S. 880, the Supreme Court of Delaware upheld the Delaware Constitution's exception for capital offenses to the general rule that all prisoners are bailable. The defendant's claim that to hold him without bail violated his rights under the Eighth and Fourteenth Amendments was described by the court as untenable. The court upheld classifications for bail eligibility.

If classes of eligibility for bail do in fact exist, then the Legislature of the State of Nevada has the right to define those classes. In the exercise of the obligation imposed on the State of Nevada by Article IV, Section 2, paragraph 2 of the United States Constitution, the State of Nevada may reasonably define types of custody to which bail does not apply, without offending the Eighth Amendment to the Constitution of the United States. In adopting the Uniform Criminal Extradition Act, it has done so.

II.

PETITIONER HAS FAILED TO ESTABLISH THAT A FEDERAL QUESTION EXISTS IN LIGHT OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

The order of the Nevada Supreme Court is neither arbitrary nor discriminatory. Petitioner's Fourth Amendment right to test his extradition has not been interfered with. No rights flowing to petitioner through *Kirkland v. Preston*, 385 F.2d 670, are affected by the order. Petitioner is validly within a class denied bail as a matter of right by the Legislature of the State of Nevada. The class is not an arbitrary one. There is no substantial federal question, nor for that matter is there any federal question, that arises in this action under the Fourteenth Amendment to the United States Constitution.

Any conflict that appears in the various cases cited by petitioner are caused merely by various non-discriminatory statutory definitions of classes entitled to bail in the various states.

CONCLUSION

The petition for writ of certiorari should be denied. Petitioner has failed to show that a substantial federal question exists. No

rights under the Constitution of the United States have been denied petitioner.

DATED this 4th day of December, 1970.

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Attorney General of Nevada

By ROBERT A. GROVES
Deputy Attorney General
Attorney for Respondent